

NTSB Order No. EA-4173

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of May, 1994

Respondent.

Docket SE-12833

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on January 7, 1993, following an evidentiary hearing.¹ The law judge dismissed an order of the Administrator suspending respondent's inspection authorization for 365 days for violating

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14 C.F.R. 43.15(a)(1).² We deny the appeal.

There is little we need to add to the initial decision. In March of 1992, respondent performed an annual inspection on a crop duster Ayers S-2R-T11 aircraft, and returned it to service.

Four months later, in July, the aircraft was involved in an accident. It had been operated in crop-dusting service for approximately 480 hours after respondent's annual inspection. Severe corrosion was found in the fuselage's aft longerons.³

It is the Administrator's contention in this proceeding that respondent did not perform a thorough and proper inspection, and that he should have detected severe corrosion because the degree of corrosion found on the aircraft in July could not have accumulated in 4 months.⁴ Respondent, in contrast, argued that he conducted a thorough and proper inspection, using the procedures cited by witness Doss, and that no corrosion was detectable. A key question for the law judge was the degree of

²14 C.F.R. 43.15(a)(1) reads:

(a) General. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall -

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all the applicable airworthiness requirements[.]

³This aircraft is of tubular construction. A number of the chromium alloy tubes had disintegrated to the point that no shiny metal could be observed. There was also blistering of the surface paint. See Exhibit A-1 photos.

⁴A witness for the Administrator, Mr. Doss, testified to the need for procedures beyond a visual inspection, such as a "tap test," to ensure the integrity of the metal tubing beneath the paint.

corrosiveness of the liquid fertilizers being sprayed by the aircraft.

On appeal, the Administrator contends that the law judge improperly rejected his expert witnesses' testimony in favor of testimony of witnesses offered by respondent who arguably are not equivalent "experts." The Administrator also argues that the law judge improperly shifted the burden of going forward. We disagree on both counts.

We decline to hold that testimony from respondent's witnesses should not be considered on a par with that of the Administrator's witnesses because respondent's witnesses' testimony was based on practical experience rather than "technical knowledge or training concerning corrosive agents." Appeal at 12. The Administrator's witness Doss, who was the principal maintenance inspector for agricultural entities in Arkansas, had received training on corrosion identification, testing, and correction that included aircraft with the chromium alloy tubing in this aircraft. Mr. Doss, by the same token, had no experience with the Ayers "Thrush" aircraft (Tr. at 29), and he testified only to his general belief that the involved liquids had high alkalinity and were not corrosive. The Administrator's witness May, although familiar with issues surrounding tubular aircraft like this one and corrosion identification, had no knowledge of crop dusting chemicals or their effect on a tubular aircraft.⁵

⁵In discussing the weight to be placed on the opinions

Respondent's witnesses, in contrast, testified from years of actual experience with this aircraft and these chemicals.⁶ They stated that the particular chemicals used in the Ayers were highly corrosive, and that the damage to the tail was consistent with the fact that these chemicals accumulate in the tail. Tr. at 69. Witness Talbott testified that the corrosion exhibited in July could have been present 4 months earlier but not detectable.

Although both witnessed the inspection and tail disassembly, neither Mr. Talbott nor Mr. Harmon had seen any sign of corrosion in March.

As earlier noted, respondent testified to having conducted as thorough an inspection as possible without destroying parts of the aircraft. Significantly, respondent introduced evidence to show that the aircraft was supposed to have 100-hour inspections

(..continued)

offered by these two gentlemen that the corrosion had to have existed at the annual inspection, the law judge stated (Tr. at 96):

Neither Mr. Doss nor Mr. May have any background experience -- certainly not any hands-on experience with agriculture aircraft or spraying aircraft as did the Respondent's witnesses. Mr. Doss did testify that he had been to some classes where the Navy had talked about some chemicals and it was his opinion -- and this testimony came out in rebuttal -- that the type of chemical or fertilizer was probably less corrosive than other chemicals. He did not make it clear, nor did I understand from his testimony that he was talking about other chemicals used in agriculture spraying, just other chemicals, for whatever that's worth.

⁶Witness Talbott is an ag pilot and mechanic with an A&P rating and inspection authorization. He has more than 20 years of experience with this aircraft and more than 12,000 hours of flight time. Tr. at 57, 60. Witness Harmon, the owner and pilot of the aircraft, with 10-15,000 hours flight time, has had a crop-dusting business since 1968. Tr. at 68-71.

to check for corrosion, thus suggesting that corrosion could become a serious problem in a very short time. See Exhibit R-1.

There was no evidence in the record to indicate that the aircraft had had **any** of the 100-hour corrosion inspections in more than 400 operating hours.

Once respondent offered this documentary and testimonial evidence, we see no error in the law judge holding that, if he was to sustain his burden of proof, the Administrator was obliged to offer more convincing evidence than the broad opinion testimony that was presented.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The initial decision is affirmed.

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.